REMARKS

Favorable reconsideration of this application, in light of the following discussion, is respectfully requested.

Claims 1-23 are currently pending. Claims 9-15 have been amended by the present amendment. The changes to Claims 9-15 are supported by the originally filed specification and do not add new matter.[1]

In the outstanding Office Action, Claims 1-3, 5-11, 13-18, and 20-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2002/0091815 to Anderson et al. (hereinafter "the '815 application") in view of U.S. Patent No. 6,209,037 to Brown et al. (hereinafter "the '037 patent"), U.S. Patent No. 5,218,680 to Farrell et al. (hereinafter "the '680 patent"), and U.S. Patent No. 7,263,560 to Abdelaziz et al. (hereinafter "the '560 patent"); and Claims 4, 12, and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the '815 application in view of the '037 patent, the '680 patent, the '560 patent, and U.S. Patent No. 4,885,684 to Austin et al. (hereinafter "the '684 patent").

Applicants wish to thank Examiner Fearer and Supervisory Patent Examiner Jude-Gilles for the interview granted Applicants' representatives on May 7, 2008, at which time the outstanding rejection of Claim 1 under 35 U.S.C. § 103(a) was discussed. The Examiners indicated that the rejection of the claims would be reconsidered upon formal submission of a response to the outstanding Office Action.

Claim 1 is directed to a method of determining which, if any, communication protocols can be used to extract status information related to a network device, comprising: (1) selecting a communication protocol among a plurality of communication protocols; (2) obtaining, from a device object associated with the network device, information for accessing

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[1] See, *e.g.*, paragraph [0107] of Applicants' specification; also see Figure 9.

13

the network device using the selected communication protocol; (3) <u>determining if the</u> <u>network device can be accessed using the selected communication protocol and the</u> <u>information for accessing the network device obtained from the device object</u>; (4) <u>if the</u> <u>determining step determines that the network device can not be accessed using the selected</u> <u>communication protocol, removing, from the device object, the information for accessing the</u> <u>network device using the selected communication protocol</u>; and (5) <u>if the determining step</u> <u>determines that the network device can be accessed using the selected communication</u> <u>protocol, performing further tests to determine whether the selected communication protocol</u> <u>can be used to extract the status information from the network device</u>.

Regarding the rejection of Claim 1 under 35 U.S.C. § 103(a), the outstanding Office Action acknowledges that the '815 application, the '037 patent, and the '680 patent fail to disclose "a method of determining if a network device can be accessed using a selected communication protocol, removing, from the device object, the information for accessing the network device using the selected protocol, or determining whether the selected communication protocol can be used to extract the status information from the network device."[2] Rather, the outstanding Office Action relies on the '560 patent for these teachings.

Thus, the '815 application, the '037 patent, and the '680 patent, alone or in proper combination, fail to disclose

> determining if the network device can be accessed using the selected communication protocol and the information for accessing the network device obtained from the device object;
>
> if the determining step determines that the network device can not be accessed using the selected communication protocol, removing, from the device object, the information for accessing the network device using the selected communication protocol; and
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> if the determining step determines that the network device can be accessed using the selected communication

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[2] See Office Action dated March 7, 2008, page 6.

protocol, performing further tests to determine whether the
selected communication protocol can be used to extract the
status information from the network device,

as defined in Claim 1.

The '560 patent is directed to a decentralized resource advertisement and querying

mechanism for peer-to-peer networks. In particular, the '560 patent discloses a shared

resource distributed index mechanism that peers in a peer-to-peer network may utilize to

distribute index entries corresponding to indexes shared resources among one or more other

peers. Through the '560 system, a peer may access the resources of another peer through the

distributed index mechanism.

However, it is respectfully submitted that the '560 patent fails to disclose <u>determining</u>

<u>if the network device **can be accessed using the selected communication protocol**</u> and the

information for accessing the network device obtained from the device object. The

outstanding Office Action asserts that the claimed "determining" is taught at column 33, lines

25-37 of the '560 patent, which discloses an access service that may be used to validate,

distribute, and authenticate a group member's credentials. The '560 patent discloses that

"[t]he access service may define **the type of credential used in the message-based**

protocols used within the peer group." The '560 patent defines a "credential" as a key that,

when presented in a message body, may be used to identify a sender and to verify that

sender's right to send the message to the specified endpoint.[3] The '560 patent further

discloses that a peer receiving an access request provides the requesting peer's credentials

and information about the request to the access service to determine if access is permitted.

That is, the '560 patent discloses an access service that determines whether a peer has access

privileges based on the peer's credentials (*i.e.*, a key identifying the peer). The '560 patent

does not disclose <u>determining if the network device **can be accessed using the selected**</u>

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[3] See '560 patent, column 27, lines 22-24.

communication protocol and the information for accessing the network device obtained

from the device object.

Further, it is respectfully submitted that the '560 patent fails to disclose <u>removing,</u>

<u>from the device object, the information</u> **for accessing the network device using the selected**

communication protocol. The outstanding Office Action asserts that the claimed

"removing" is taught at column 26, lines 6-13 and column 27, lines 40-55 of the '560 patent,

which discloses a protocol stack and high-level communication services layered upon core

protocols. In particular, column 26, lines 6-13 of the '560 patent discloses that as a message

passes down a protocol stack (applications, services, endpoint and transports), each level may

add one or more named elements to the message. As a message is passed back up the '560

stack on the receiving peer, protocol handlers may remove those elements. The '560 patent

discloses that the "elements" may include a name space, a name, a type, a signature or digest,

and content.[4] Further, column 27, lines 40-55 of the '560 patent simply discloses that the

high-level communication services may perform message re-ordering, duplicate message

removal, and processing acknowledgement messages. The '560 patent does not disclose

<u>removing, from the device object, the information</u> **for accessing the network device using**

the selected communication protocol.

Moreover, it is respectfully submitted that the '560 patent fails disclose the claimed

"removing," <u>if the determining step determines that the network device</u> **can not be accessed**

<u>using the selected communication protocol</u>. Rather, it is noted that the '560 patent does not

disclose a dependent relationship between the determination of whether a peer has access

privileges and the disclosed removal of elements/messages. That is, the removal of the '560

elements/messages is not performed based on the determination of whether the peer has

access privileges. Thus, even assuming arguendo that the '560 removal of

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[4] See '560 patent, column 26, lines 14-17.

elements/messages teaches the claimed "removing," the '560 patent does not disclose that the information is removed <u>if the determining step determines that the network device can not be accessed using the selected communication protocol</u>.

Further, it is respectfully submitted that the '560 patent fails to disclose <u>performing further tests to</u> **<u>determine whether the selected communication protocol can be used to extract the status information</u>** <u>from the network device</u>. Rather, the outstanding Office Action asserts that the claimed "determining" is taught at column 55, lines 14-36 of the '560 patent, which discloses that the peer-to-peer platform may include core protocols. The '560 patent discloses that the core protocols include an endpoint routing protocol, which may be used by a peer to **discover a route (sequence of hops)** to send a message to another peer, potentially traversing firewalls and NATs. That is, the '560 patent discloses using an endpoint routing protocol to identify a message transfer route. The '560 patent does not disclose using the endpoint routing protocol to <u>perform further tests to</u> **<u>determine whether the selected communication protocol can be used to extract the status information</u>** <u>from the network device</u>.

Moreover, it is respectfully submitted that the '560 patent fails to disclose the claimed "performing further tests," <u>if the determining step determines that the network device</u> **<u>can be accessed</u>** <u>using the selected communication protocol</u>. Rather, it is noted that the '560 patent does not disclose a dependent relationship between the determination of whether a peer has access privileges and the disclosed route discovery. That is, the '560 route discovery is not performed based on the determination of whether the peer has access privileges. Thus, even assuming arguendo that the '560 route discovery teaches the claimed "performing further tests," the '560 patent does not disclose that the further tests are performed <u>if the determining step determines that the network device can be accessed using the selected communication protocol</u>.

Additionally, to establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP § 2106(II)(C) states that

> when evaluating the scope of a claim, every limitation in the claim must be considered. USPTO personnel **may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation.** Instead, the claim **as a whole must be considered.** See, e.g., *Diamond v. Diehr*, 450 U.S. 175, 188-89, 209 USPQ 1, 9 (1981).

Further, MPEP § 2141.02 states that

> [i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but **whether the claimed invention as a whole would have been obvious.** *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983).

It is respectfully submitted that the outstanding Office Action has failed to establish a *prima facie* case of obviousness, as the outstanding Office Action has failed to treat Claim 1 as a whole. Rather, the outstanding Office Action has impermissibly dissected the claimed invention into discrete elements and then evaluated the elements in isolation.

For example, with respect to the claimed if the determining step determines that the network device can not be accessed using the selected communication protocol, removing, from the device object, the information for accessing the network device using the selected communication protocol, the outstanding Office Action appears to assert that the claimed "selected communication protocol" is met by the '815 protocol (*e.g.*, HTTP and TCP socket based protocols), which is used by a device to report status information messages in an enterprise management system; and that the claimed "removing" is met by the '560 removal of elements/messages in a decentralized peer-to-peer advertisement system. However, the outstanding Office Action does not explain and it is unclear as to how the combination of the '560 removal of elements/messages and the '815 protocol, even if properly combinable,

relate to the claimed removal of the "selected communication protocol." Rather, the combination would at most appear to suggest the removal of elements/messages from the '815 protocol, which is used to report status information messages. Further, it is unclear as to how the '815 protocol would relate to the determination of whether a peer has access privileges, as disclosed in the '560 patent. The combination of the applied references does not disclose "if the determining step determines that the network device can not be accessed using the selected communication protocol, removing, from the device object, the information for accessing the network device using the selected communication protocol," **considered as a whole**.

Further, with respect to the claimed if the determining step determines that the network device can be accessed using the selected communication protocol, performing further tests to determine whether the selected communication protocol can be used to extract the status information from the network device. The outstanding Office Action appears to assert that the claimed "selected communication protocol" is met by the '815 protocol, as discussed above; the claimed "performing further tests" is met by the '037 CSimpleStream that loads and registers streams in a motion control system; and the claimed "to determine whether the selected communication protocol can be used to extract the status information from the network device" is met by the '560 endpoint routing protocol that may be used to discover a route to send a message to another peer in a decentralized resource advertisement and querying mechanism for peer-to-peer networks. However, the outstanding Office Action does not explain and it is unclear as to how the combination of the '037 CSimpleStream, the '560 end point protocol, and the '815 protocol, even if properly combinable, relate to the claimed "performing further tests to determine whether the selected communication protocol can be used to extract the status information from the network device." Rather, the combination would at most appear to suggest that the '815 protocol, which is used to report

19

status information messages, may be use a stream that is loaded and registered by the '037

CSimpleStream to control a given motion control device and to route messages via a route

that is discovered by the '560 end point routing protocol. Further, as noted above, it is

unclear as to how the '815 protocol relates to the determination of whether a peer has access

privileges, as taught by the '560 patent. The combination of the applied references does not

disclose "if the determining step determines that the network device can be accessed using

the selected communication protocol, performing further tests to determine whether the

selected communication protocol can be used to extract the status information from the

network device," **considered as a whole**.

Moreover, as noted in MPEP § 2142, the Federal Circuit has stated that "rejections on

obviousness cannot be sustained with mere conclusory statements; instead, there must be

some articulated reasoning with some rational underpinning to support the legal

conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed.

Cir. 2006). See also *KSR*, 550 U.S. at ___ , 82 USPQ2d at 1396 (quoting Federal Circuit

statement with approval). However, it is noted that, other than using hindsight reconstruction

of Applicants' invention, the outstanding Office Action does not provide an articulated

reasoning with some rational underpinning of record as to why one of ordinary skill in the art

would have been motivated to modify the teachings of the '815 application with the '037

patent, the '680 patent, and the '560 patent. Rather, the rejection on obviousness rests on

mere conclusory statements, as the outstanding Office Action simply asserts that it would

have been obvious to combine the teachings of the applied references for the purpose of

remote network device management, configuring networks and devices, and distributed index

peer-to-peer networking. As noted above, the outstanding Office Action has impermissibly

dissected the claimed invention into discrete elements and then evaluated the elements in

isolation.

Thus, no matter how the teachings of the '815 application, the '037 patent, and the '680 patent are combined, the combination does not teach or suggest the "determining," "removing," and "performing further tests," as defined in Claim 1. Accordingly, it is respectfully submitted that Claim 1 (and all associated dependent claims) patentably define over any proper combination of the '815 application, the '037 patent, the '680 patent, and the '560 patent.

Claim 9, recites in part, means for determining if the network device can be accessed using the selected communication protocol and the information for accessing the network device obtained from the device object; means for removing, from the device object, the information for accessing the network device using the selected communication protocol, when the means for determining determines that the network device can not be accessed using the selected communication protocol; and means for performing further tests to determine whether the selected communication protocol can be used to extract the status information from the network device, when the means for determining determines that the network device can be accessed using the selected communication protocol.

As noted above, the '815 application, the '037 patent, the '680 patent, and the '560 patent fail to disclose the steps of "determining," "removing," and "performing further tests" recited in Claim 1. Thus, the '815 application, the '037 patent, the '680 patent, and the '560 patent fail to disclose the system of Claim 9. Accordingly, it is respectfully submitted that Claim 9 (and all associated dependent claims) patentably defines over any proper combination of the '815 application, the '037 patent, the '680 patent, and the '560 patent.

Claim 16, recites in part, instructions for determining if the network device can be accessed using the selected communication protocol and the information for accessing the network device obtained from the device object; instructions for removing, from the device object, the information for accessing the network device using the selected communication

protocol, when the instructions for determining determine that the network device can not be accessed using the selected communication protocol; and instructions for performing further tests to determine whether the selected communication protocol can be used to extract the status information from the network device, when the instructions for determining determine that the network device can be accessed using the selected communication protocol.

As noted above, the '815 application, the '037 patent, the '680 patent, and the '560 patent fail to disclose the steps of "determining," "removing," and "performing further tests" recited in Claim 1. Thus, the '815 application, the '037 patent, the '680 patent, and the '560 patent fail to disclose the computer program product of Claim 16. Accordingly, it is respectfully submitted that Claim 16 (and all associated dependent claims) patentably defines over any proper combination of the '815 application, the '037 patent, and the '680 patent.
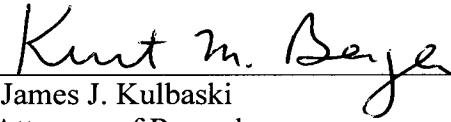
Regarding the rejection of dependent Claims 4, 12, and 19 under 35 U.S.C. § 103(a), it is respectfully submitted that the '684 patent fails to remedy the deficiencies of the '815 application, the '037 patent, the '680 patent, and the '560 patent, as discussed above. Accordingly, it is respectfully submitted that dependent Claims 4, 12, and 19 patentably define over any proper combination of the '815 application, the '037 patent, the '680 patent, the '560 patent, and the '684 patent.

Thus, it is respectfully submitted that independent Claims 1, 9, and 16 (and all associated dependent claims) patentably define over any proper combination of the '815 application, the '037 patent, the '680 patent, the '560 patent, and the '684 patent.

Consequently, in view of the present amendment and in light of the above discussion,

the outstanding grounds for rejection are believed to have been overcome. The application as

amended herewith is believed to be in condition for formal allowance. An early and

favorable action to that effect is respectfully requested.

Respectfully submitted,

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